

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 383 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

NAJIBHAI MAGHABHAI VAGHELA

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Appearance:

1. Criminal Appeal No. 383 of 1985  
Mr. L.R. Pujari, A.P.P. for Petitioner  
MR KR RAVAL for Respondent No. 1
2. Criminal Revision ApplicationNo 86 of 1985  
Mr. L.R. Pujari, A.P.P. for Petitioner  
MR KR RAVAL for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/04/99

ORAL JUDGEMENT

State being aggrieved by the judgment and order of acquittal recorded by the learned Additional Sessions Judge, Palanpur in Sessions Case no.64/1984 on 30th January, 1985 has preferred this appeal.

The respondent-accused was charged for an offence punishable under Section 302 of the Indian Penal Code (IPC) and also for an offence punishable under Sec.404 of the IPC vide Exh.3. It is alleged by the prosecution that deceased Mana wd/o Mohan Jagma was residing alone at village Rampur of Deesa Taluka. Father of the respondent-accused had a house just opposite the house of the deceased. The respondent-accused was engaged in work of diamond cutting at Surat where he got married with one Parvati, PW 4. Before about ten days from the date of incident, the respondent-accused came from Surat to his native place to see his parents. Dahyabhai and Kanti-brothers of the respondent were undergoing sentence of life imprisonment and at the relevant time Dahyabhai brother of the respondent also arrived at the village. Jamna- PW 2 wife of Dahyabhai was also residing at the same place. On the date of incident, namely, 12-6-1984 the said Dahyabhai went to Ahmedabad for reporting to prison. The respondent-accused met Jamna and at the relevant time he had an injury on the cheek. Jamna questioned about the injury and the respondent replied that he had committed murder of Mana. Saying so, he moved from that place. Jamna did not convey this to anyone. Kankuben, PW 7 did not see Mana in the morning hours, and therefore she conveyed to Rana Lakha. Kankuben saw that the door was open and Mana was lying in injured condition. Rana Lakha called Police Patel. Ultimately, information was lodged with the Deesa Police Station. The Police arrested the respondent from Surat on 17-6-1984. The Investigating Officer filed charge-sheet against the accused in the Court of Judicial Magistrate, First Class who committed the accused to the Court of Sessions. The charge Exh.3 was read over to the accused-respondent who pleaded not guilty and contended that he was entirely innocent.

On appreciation of evidence, oral as well as documentary and having considered the submissions made by the learned Counsel, the learned Additional Sessions Judge acquitted the accused for the offence for which he was tried.

It is a case of circumstantial evidence. The learned Public Prosecutor submitted that the case rests on extra judicial confession made by the accused before Jamna and finding of ornaments from one Sitaram who

received the same from the accused-respondent. The learned Additional Sessions Judge has considered the evidence in detail. So far as Jamnaben, PW 2 is concerned she has stated that she was afraid and therefore she did not convey to anyone the fact that the accused committed murder of Mana. She had rest during night hours as usual and in the morning as usual she went to the field for daily routine where she worked for the whole day. Before the police she has stated that the accused came with a bundle made of handkerchief. She has also admitted that accused has not stated before her that he committed murder of Manadi(Mana). She has admitted that she has not seen the accused either entering the house or coming out from the house of Mana. She has not seen the accused between 11.00 a.m. to 6.00 .p.m. The learned Additional Sessions Judge has not accepted the evidence of this witness so as to connect the accused with the crime. Considering the contradictions and nature of evidence, the learned Additional Sessions Judge has held that her evidence is not connecting the accused with the crime. Mr. Pujari, learned Public Prosecutor submitted that the accused was the person last seen in the company of the deceased. For the said purpose he has relied on the evidence of Bai Chothi, PW 3. She has stated that her daughter used to work for the deceased. She used to fetch water for her(deceased) and she has also done work of plastering by means of laying a coating on the floor with mud and cow dung in the house of the deceased. She has stated that she had been to the house of the deceased for labour charges and at that time she saw the accused. On the next day morning, she came to know that incident in question took place. She was not able to state as to whether deceased used to put on the ornaments or not. No inference can be drawn from this evidence that accused has committed the crime. Parvatiben, PW 4 has been declared hostile. She admitted that her husband was working at Surat and that he had been to his native place. He did not bring any ornaments. She has stated that she was given ornaments which she had kept with Sitaram Punjabi, PW 5 before about 2 years. That she alone had been to the house of Sitaram. Sitaram, PW 5 has stated that in the month of June, Parvatiben alone came to his house stating that she has no place to keep the ornaments and requested to keep the ornaments and saying so, gave one bundle wherein ornaments were tied. He has specifically stated that Parvatiben alone came and her husband did not come. He has admitted that he had not made any entry in the books of account with regard to ornaments given by Parvati.

Apart from this, the trial Court has appreciated

the evidence of Kankuben. In the cross-examination, it is stated by her that who went to the house of the deceased and who came out from the house of the deceased is not know to her. She was not able to state positively as to what type of ornaments the deceased was putting on. The police did not ask her to see the ornaments. The trial Court has also noted that the deceased was widow and aged and it is not possible to believe that all the ornaments were being worn by her every day. Thus, when the evidence was doubtful, the learned Sessions Judge has given the benefit of doubt. We are in agreement with the views expressed by the trial Court, and therefore, we do not discuss the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:

".... This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court. Expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

In the result appeal stands dismissed.

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stanley-bcp.